

**MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 24 - 25, 2004
Room 307, State Capitol
Santa Fe**

The first meeting of the Water and Natural Resources Committee was called to order at 10:10 a.m. on Thursday, June 24, 2004, by Representative Joe M Stell, chair.

PRESENT

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort (June 24)
Sen. Joseph J. Carraro
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larranaga
Rep. James Roger Madalena
Rep. Brian K. Moore
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Mimi Stewart
Rep. Don Tripp (June 24)

ABSENT

Sen. Shannon Robinson
Rep. Robert White

Advisory Members

Rep. Ray Begaye (June 24)
Rep. Anna M. Crook
Sen. Clinton D. Harden, Jr. (June 24)
Rep. Rhonda S. King
Rep. Ben Lujan (June 24)
Rep. Danice Picraux
Sen. Nancy Rodriguez
Sen. Leonard Tsosie
Rep. Peter F. Wirth

Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Steve Komadina
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Rep. Eric A. Youngberg

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Thursday, June 24

Representative Stell began by welcoming members, staff and guests and by having members of the committee introduce themselves.

GOVERNOR RICHARDSON'S WATER PRIORITIES

Bill Hume, director of policy and planning for the Office of the Governor, discussed Governor Richardson's water priorities with regard to worsening drought conditions in New Mexico and the need to catalog water resources and put them to the best possible use. He explained that the governor believes the state must take control of its water future through the state water plan, and that the governor's appointment of John D'Antonio as state engineer and Estevan Lopez as director of the Interstate Stream Commission (ISC) are solid moves toward taking control of that future.

Mr. Hume stressed the need for active water management, noting that the state engineer is establishing water masters in the Pojoaque Basin and in the Gallinas Basin near Las Vegas and is currently drafting new management regulations. He also emphasized the need to address the problem of regulating domestic wells, especially with respect to limiting or denying domestic well permits in critical management areas where new wells may jeopardize existing uses or the state's ability to meet interstate compact obligations.

Next, Mr. Hume discussed New Mexico's involvement in three Native American water rights settlements: the *Aamodt* suit, the Navajo settlement and the Arizona Water Rights Settlement Act, which involves water from the Gila River. Though the settlements in these cases are complicated and the negotiation process often opaque, the administration supports negotiation as a better and more workable process than the alternative of litigation. Mr. Hume thanked the Navajo Nation for making it clear from the beginning that the nation preferred the give and take of negotiations to litigation.

Also, Mr. Hume discussed environmental issues, New Mexico-Texas and New Mexico-Mexico water issues, and the governor's intention to place renewed emphasis on water infrastructure development. He noted that the governor has proposed direct water negotiations with the governor of Texas and counterparts in Mexico.

Finally, Mr. Hume reported that legislative requests for the 2005 session would lean more toward funding for water-related projects than new laws and conceded that it would be difficult to adequately fund every agency involved with water projects.

EXECUTIVE SESSION ON LITIGATION ISSUES

The committee went into executive session to discuss water litigation issues.

UPDATE ON LEGAL ISSUES

Stephen Farris, director of the Water, Environmental and Utilities Division of the Office of the Attorney General, and Estevan Lopez, director of the ISC, provided the committee with an update on several legal issues involving water in New Mexico.

Active litigation regarding the Rio Grande silvery minnow has ended for the time being, according to Mr. Farris, and all parties to the litigation have agreed that there are no remaining issues for the court to decide other than whether Judge Parker's opinion should be vacated or not. Accordingly, the parties are concentrating on short- and long-term strategies to ensure the viability of the species and provide adequate water to current water users. Short-term strategies include short-term (two to three years) water management agreements. Long-term strategies include the Middle Rio Grande Endangered Species Act (MRGESA) collaborative program, which focuses on river water management and habitat restoration; better scientific understanding of habitat needs, interaction between surface water and ground water and effects of water management decisions on endangered species; and trying to better understand and control depletions to the river.

Mr. Farris and Mr. Lopez also discussed potential problems caused by the movement of nesting pairs of southwestern willow flycatchers into areas of Elephant Butte Reservoir that are currently dry but once were covered by reservoir water. They explained that current drought conditions coupled with some water storage in reservoirs further north have caused the water level of Elephant Butte to drop significantly, but that it is possible that the reservoir might be filled to previous levels sometime in the future, thus creating a problem with the southwestern willow flycatchers' habitat. A meeting on the issue with Texas, Colorado and federal officials is scheduled for next week.

Next, Mr. Farris and Mr. Lopez provided the committee with an update on negotiations with Arizona over Gila River water. They explained that the Arizona Water Rights Settlement Act, a bill that would settle Native American water issues in Arizona, holds ramifications for 18,000 acre-feet of water to which New Mexico currently has access due to a 1968 agreement. Mr. Farris and Mr. Lopez noted that funding would likely need to be secured to help New Mexico preserve the right to access as much of the 18,000 acre-feet of water as possible.

Also, Mr. Farris and Mr. Lopez addressed the status of implementation of the settlement on the Pecos River. They explained that the settlement has three conditions that need to be met before the settlement becomes effective: implementation of the consensus plan, entry of a partial final decree and compliance with federal contracts and environmental laws. Mr. Farris and Mr. Lopez went on to discuss each of those conditions. Implementation of the consensus plan involves the purchase or leasing of water rights along the river, a process that is underway. Obtaining entry of the Partial Final Decree involves both addressing objections that have been filed and litigation. Mr. Farris and Mr. Lopez noted that discovery in the litigation is underway

and that a hearing is set for November 15, 2004. The compliance with the federal environmental laws component of the settlement has led the ISC to participate in two environmental impact studies (EIS) on the Pecos River. One of those involves modifications to Sumner Dam to provide habitat for the endangered Pecos bluntnose shiner and should be completed by December 2006. The other EIS involves the conversion of Carlsbad project water from irrigation to compact delivery, and a draft is scheduled for completion by September 2005.

Finally, Mr. Farris and Mr. Lopez provided the committee with an update on the *Aamodt* settlement. They explained that there are ongoing negotiations with the federal government over cost sharing of the project and that the settlement will offer an opportunity to resolve long-standing litigation, as well as provide certainty with respect to quantification of both pueblo and non-pueblo water rights to ensure the future water supply to the region. They also noted that participation in the settlement is voluntary and that the court would address non-signatories to the agreement.

STRATEGIC WATER RESERVE

Fred Nathan, executive director of Think New Mexico, provided the committee with testimony regarding a bill introduced during the 2004 legislative session regarding a strategic water reserve. He explained the need for such a reserve, the potential uses of the strategic water reserve, funding for the project and a list of individuals and organizations endorsing its concept.

Norman Guame, former director of the ISC and now a water consultant, noted that New Mexico needs tools like the strategic water reserve.

STATUS OF NAVAJO WATER SETTLEMENT

Mr. Lopez provided the committee with an update on the Navajo water settlement. Mr. Lopez noted that even though New Mexico was granted 11.25 percent of the Upper Colorado River Basin yield (approximately 669,000 acre-feet per year), the San Juan River Basin only contributes three percent of the annual yield available to the Upper Colorado River Basin. This relatively large apportionment to New Mexico, he explained, was granted with the understanding that New Mexico would someday have to address the as-yet-unquantified Indian water rights in the region. A draft settlement was released for public review last December and a revised draft and response to public comment should be completed in July 2004. The Navajo Nation approval process will then begin, and, if the nation and the ISC approve the terms of the settlement, it can be introduced to Congress as early as this fall. John Gilmore, representing the Navajo Nation, explained the process for the Navajo Nation's approval of the proposed settlement.

The committee recessed at 4:45 p.m.

Friday, June 25

USE OF THE WATER INNOVATION APPROPRIATION

James Jimenez, secretary of finance and administration, and Bill Sisneros, director of the New Mexico Finance Authority, provided the committee with an overview of the \$10 million

water innovation appropriation. They explained that money from the appropriation would be used to fund innovative water use and conservation projects through the New Mexico Finance Authority. Mr. Sisneros outlined the time frame for the projects, from initial letters of interest to finance authority approval and initiation of the projects. He noted that a large number of groups and individuals had either been contacted directly about the availability of funds for innovative water projects or had been notified by advertisements taken out in periodicals across the state, and that over 240 responses had already been received.

Mr. Sisneros went on to explain that projects likely to be invested in would be the result of innovative ideas backed by good science, though he emphasized that innovative new ideas are being sought.

WORK PLAN

Representative Stell remarked that he has been dealing with water issues in the legislature for over 18 years, since New Mexico and Texas were involved in a lawsuit regarding water resources for El Paso. He noted that the questions asked by legislators 18 years ago are the same questions being asked now, emphasizing that water is a complicated issue that requires the constant re-education of the legislature. In that time, Representative Stell noted that the funding of small water projects garners most of the legislature's attention while larger projects go unfunded, and that all the while water continues to flow under New Mexico's borders. He suggested that \$500 million could give New Mexico the opportunity to appropriate some of that water before it left the state, and that it might make sense to allow private companies, regulated by the Public Regulation Commission, to provide water to New Mexicans at a small profit, since the state has not yet committed itself to providing adequate funding for these projects.

The committee selected the following meeting dates and locations:

July 27-28	Clovis
August 10-11	Albuquerque
September 7-8	Taos
October 3-5	Deming/ Silver City/ Las Cruces
November 11-12	Santa Fe

The committee also added the following items to the proposed work plan:

- history of Water Trust Board project funding;
- partnerships with the private sector;
- drought strategies of other states; and
- computer models of water movement.

The committee adjourned at 11:20 a.m.